

THE LAND ORDER

Attorney General Griggs
Re-affirms.

Full Text of His Latest Opinion
Delivered to President McKinley.

Department of Justice, Washington,
D. C., November 21, 1899.

The President—Sir: By an executive order, bearing date of September 11, 1899, you directed: That all proceedings taken or pending for the sale or disposition of public lands in the Hawaiian Islands shall be discontinued; and that if any sales or agreements for sale of said public lands have been made since the adoption of the resolution of annexation the purchasers shall be notified that the same are null and void and any consideration paid to the local authorities on account thereof shall be refunded.

This order was issued in conformity to an opinion rendered to you by myself on September 9, 1899, wherein the power of the local Government of Hawaii to make sale and disposition of the public lands in the Hawaiian Islands was considered upon the approval of the resolution of annexation those lands became the property of the United States and could be disposed of only in accordance with the law of Congress.

I am now put in possession by you of a communication, with accompanying documents, from Hon. Alfred S. Hartwell, Special Agent of the Government of the Republic of Hawaii in Washington, wherein he requests, on behalf of President Dole, a reconsideration of your Executive order of September 11, 1899. You have requested me to examine and hear for you the questions involved and the views of the representatives of the local Government of Hawaii, and to advise you thereon.

There are several grounds of objection to the legality and propriety of the order of September 11, 1899, which are raised on behalf of President Dole. I will state them and consider them in the order in which they are offered.

In the first place, it is contended that the provisions of the resolution of annexation, taken in connection with the failure of Congress up to the present time to pass any special laws concerning the management and disposition of the public lands of Hawaii, show that it was intended by the two Governments that, pending Congressional legislation, the existing Government of the Hawaiian Islands should continue to administer its public lands laws. This contention is based principally upon that clause of the resolution which declares that the "municipal legislation of the Hawaiian Islands not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution, nor contrary to the Constitution of the United States, nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine."

This contention was adversely disposed of by me in my opinion of September 9, 1899, an appropriate portion of which I here repeat:

"It is only necessary to refer to the language of the resolution and to the well-understood principles of public law which govern the subject of territory ceded by one government to another, to reach the easy conclusion that the public lands in the Hawaiian Islands, upon the approval of the joint resolution of cession, became the property of the United States, and could thereafter be disposed of only in accordance with such special laws as Congress might thereafter enact. The preamble of the resolution declares: 'Whereas the Government of the Republic of Hawaii having in due form signified its consent, in the manner provided by its Constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public buildings or edifices, ports, harbors, military equipments, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining.'"

And the resolution following this preamble resolves:

"That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America."

This language expressly recites the cession and transfer to the United States of the absolute fee and ownership of all public, Government, or crown lands, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands.

The resolution of annexation further provides:

"The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition. Provided, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local Government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes."

The effect of this clause is to sub-

ject the public lands in Hawaii to a special trust, limiting the revenue from or proceeds of the same to the uses of the inhabitants of the Hawaiian Islands for educational or other public purposes. This merely restricted the uses to which the proceeds of such lands could be put, but did not in anywise affect the previous provisions of this clause, which conferred upon Congress the sole and absolute authority to provide for the management and disposition of these lands. The effect of the language quoted is to vest in Congress the exclusive right, by special enactment, to provide for the disposition of public lands in Hawaii. Possibly such would have been the effect of the resolution even if this language had not been inserted. But the language having been expressly inserted, there can be no doubt whatever but that the effect of the resolution is to deprive the local Government of Hawaii of all authority to dispose of these lands in any manner whatever, except by virtue of special laws enacted by Congress. The fact that Congress has failed up to this time to legislate on the subject has not reinvested the Hawaiian Government with its former power of disposition. That power ceased upon the cession. The lands then became the property of the United States, and could be disposed of only in accordance with the laws of Congress.

I referred in my opinion to the language of the Supreme Court of the United States in the case of Harcourt vs. Gaillard, 12 Wheaton, 523, as expressive of the general principle which governs and controls this subject.

I cannot but think that the representative of the Hawaiian Government has failed to appreciate the fact that the Hawaiian Republic as a separate and sovereign power ceased to exist when the resolution of annexation took effect. It existed as an organized government only for purposes of municipal legislation within the well-accepted meaning of that phrase, and for such special purposes besides as were expressed in the resolution, the sale and disposition of the public lands not being of the latter class.

In a case involving the question of a grant made by Spain after the date of the treaty ceding territory and prior to the ratification of the treaty, the Supreme Court of the United States, discussing the effect of the signature of treaty conventions and the date when they took effect and the power of the ceding country over public lands pending ratification, expressly limits the meaning of the term "municipal legislation" to that class of laws that relate solely to the internal affairs of the country and the relations of the people to each other, and declares that the exercise of sovereignty by the ceding country ceases after the signature of the treaty "except for strictly municipal purposes, especially for granting lands." (Davis vs. the Police Jury of Concordia, 9 Howard, 280-289.)

Similar language is commonly used in expressing the legal conditions in a country conquered by arms. It is commonly said in such cases the municipal laws governing the people in their relations with each other remain in force, subject to the will of the conqueror, but that the power and authority of the former sovereign, either to make laws, exercise dominion, or grant rights or privileges or make conveyance of public property, are terminated.

The existing Government of Hawaii very clearly, by the resolution of annexation, parted with all ownership of the public lands of Hawaii. Indeed, it is scarcely an adequate expression of the fact to say that it parted with the ownership, because that Government, as a sovereign power, was dissolved and ceased to exist. Its public property, including lands, became vested in the United States, and only by the authority or direction of the United States could those lands be disposed of. If there is any authority left in the officials exercising government in Hawaii to grant to purchasers and others good title to lands which, by the resolution, were conveyed to the United States, it must be by reason of some delegation in the nature of agency, and that delegation must be found in the resolution of annexation, because there had been no other legislation by Congress on this subject. But, as I have previously decided, and as I have here pointed out, no such authority is contained in the resolution, but the reasonable and natural construction of its language is opposed to such a contention. The case may be summed up by the statement that whatever right, title, interest, or property the Republic of Hawaii had in public lands at the time the resolution of annexation took effect were transferred thereby to the United States and the Republic of Hawaii, without any power whatever to convey by any kind of grant or concession the legal or equitable title of the United States.

Second. It is suggested that the Executive order of September 11, 1899, should be modified so as not to apply to sales or agreements for the sale of public lands made between the date of the approval of the resolution and the 12th day of August, 1898, which was the date on which the ceremonies took place at Honolulu evidencing the formal taking possession by the United States of the Hawaiian Islands. Exactly what these ceremonies were I am not informed, except that they comprised the lowering of the Hawaiian flag and the running up of the flag of the United States in the presence of the former diplomatic representative of the United States in Hawaii and of the officials of the Hawaiian Republic.

Our Supreme Court, speaking with reference to this particular subject of international jurisprudence and construction, has said:

"All treaties, as well those for cession of territory as for other purposes, are binding upon the contracting parties, unless when otherwise provided. The ratification of them relates back to the time of signing. Vattel, B. 4, c. 2, sec. 22; Mart. Summary, B. 8, c. 7, sec. 5."

"It is true, that, in a treaty for the cession of territory it is a national character continues for all commercial purposes; but full sovereignty, for the exercise of it, does not pass to the nation."

to which it is transferred until actual delivery. But it is also true that the exercise of sovereignty by the ceding country ceases, except for strictly municipal purposes, especially for granting lands. And for the same reason in both cases; because, after the treaty is made, there is not in either the union of possession and the right to the territory which must concur to give plenum dominum et utile. To give that, there must be the jus in rem and the jus in re, or what is called in the common law of England the jus et seisinæ conjunctio. This general law of property applies to the right of territory no less than to other rights, and have been conformable to this principle. Puffendorf par Barbeyrac, lib. 4, c. 9, sec. 8, note 2. (Davis vs. the Police Jury of Concordia, 9 Howard, 289.)

The reasons for this doctrine, as given by the courts, are that if the ceding power were to be permitted to make grants and concessions of land, privileges, and franchises, between the date of the signature of the treaty and the day of ratification, the concessionary might be deprived of a very valuable portion of the estate which it had contracted to receive. So far does the doctrine go that it is declared that before the signature of the treaty but after negotiation has begun for cession of territory, grants of land cannot be made in it without being subject to confirmation by the sovereign to whom transfer is to be made. It is too manifest to require anything more than statement that if a sovereign could exercise the power of alienation of the public domain after a treaty had been signed and before its ratification, he might change materially the relations which the people of the ceded territory had to each other, and establish a different condition than that which had been contemplated when the agreement was definitely concluded. "The law of nations does not recognize in a nation ceding a territory the continuance of supreme power over it after the treaty has been signed, or any other exercise of sovereignty than that which is necessary for social order and for commercial purposes and to keep the cession in an unaltered value until a delivery of it has been made." (Davis vs. Police Jury of Concordia, supra.)

I do not think that the difference in the method of cession employed in this case requires a different rule of interpretation from that which would have been employed if the cession had been by treaty. The reasons that are applicable in the one case are equally applicable in the other. The language of the resolution is in the present tense. It declares that "the said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America."

This resolution follows a preamble in which it is solemnly stated that the Government of the Republic of Hawaii had, in due form, signified its consent, in the manner provided by its Constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty, etc. If the ceremonies that were performed on the 12th of August, 1898, were regarded as evidencing the ratification of the agreement between the two Governments, and if the Government of Hawaii can be considered to have participated in those ceremonies, then, unquestionably, their action made the effect of the resolution relate back to the date of its adoption and required that it should be given effect in accordance with its language, which related to the date of its adoption rather than to the date of the subsequent ceremony. Nothing is said in the resolution as to any formal delivery or any further solemnity for the purpose of transferring absolutely the title to the United States. The resolution assumes that the annexation was complete with the adoption of the resolution by which the assent of the United States to the offer of the Republic of Hawaii was given.

I therefore advise you that in my opinion with respect to the public lands the resolution took effect as of the date of its approval, to wit, July 7, 1898.

Third. The Special Agent of the Hawaiian Government refers to certain correspondence between Mr. Sewall, the Special Agent of the United States at Honolulu, and the Department of State at Washington, as establishing a justification for the exercise of the power of sale by the Government of Hawaii subsequent to the annexation. At the request of the Hawaiian Government, the following question was submitted to the Department of State on August 6, 1898:

"Should not President Dole continue to execute land patents and deeds in the ordinary dealing with Government property under the Hawaiian land laws? To which it was answered by Mr. Sewall, in conformity with his instructions, as follows:

"Resolution provides that land laws of the United States shall not apply to public lands in Hawaii and that municipal legislation of Hawaii generally shall remain in force."

The Hawaiian authorities regarded this answer as tantamount to a declaration of opinion on the part of the Department of State that they were authorized to make grants of public domain in the absence of any legislation by Congress to the contrary.

It will be observed that, taken by itself, this response to the question of the Hawaiian Government does nothing more than to recite two unquestioned provisions of the resolution. Neither of which by itself, in my judgment, was pertinent to the question or decisive of it. It is impossible to say that the Special Agent of the State Department intended by this reply to answer the question in the affirmative, although it is perhaps natural to infer such an intention. But the question is one involving naked power—a power to dispose of the lands of the United States, which, under the Constitution, can only be disposed of in conformity to the will of Congress. It is not a question of the good faith of the Hawaiian officials for that is un-

questioned. A wrong inference as to the meaning of the answer forwarded by Mr. Sewall could not effectuate the exercise of an unauthorized power of sale, nor vest in a grantee a title to lands which the Hawaiian Government, under a careful consideration of the law, is decided to have been without power to convey.

Fourth. It is represented that there are large numbers of sales of public lands which were made by the Hawaiian Government to carry out its own agreements concerning the same, made prior to August 12, 1898. I understand this class of cases to comprise those where conditional sales or entries were made by purchasers or entrymen prior to the resolution of annexation, and where the conditions entitling the purchaser or entryman to a grant have been subsequently complied with.

What I have said as to the cession of the power of the Hawaiian Government to make original sales and conveyances subsequently to the cession, applies from a legal point of view to this class of cases. The difficulty is that the power of the Hawaiian Government as a sovereign possessed of sovereign right to make conveyances and grants of land ceased and all its powers and sovereign rights in this respect were transferred to the United States. This was the same with reference to lands under conditional agreements or under lease as in the case of lands unaffected by any equitable interest. Undoubtedly the Government of the United States can be trusted to do justice to all persons having claims of this nature. Doubtless Congress will, by legislation, provide means and instruments for vesting and confirming such titles. The only question for my decision is whether such power now exists in the Hawaiian Government, and I think it does not.

Fifth. Attention is called to the fact that the Executive order under consideration directs that any consideration paid to the local authorities on account of lands sold subsequently to the adoption of the resolution of annexation shall be refunded to the purchasers, and there is no provision of law which authorizes or permits the use of any money in the Hawaiian Treasury for that purpose. If this be true, then that portion of the order will be ineffective. I assume it was not intended that payment should be made contrary to the local law and regulations of Hawaii, or that money should be provided by any arbitrary or unnatural means, but only that in due course of law the money should be appropriated and applied for that purpose.

Very respectfully,
(Signed) JOHN W. GRIGGS,
Attorney General.

THE BIG PRIZE TURKEY.

"A Merry Christmas, Bob," said Scrooge, with an earnestness that could not be mistaken, as he clapped him on the back. "A merrier Christmas, my good fellow, than I have given you for many a year. I'll raise your salary, and we will discuss your affairs this afternoon over a bowl of smoking bishop. Make up the fires and buy another coal-scuttle, Bob Cratchit."

And as to the big prize turkey which the regenerated Scrooge sent to Camden Town, do we not all know what sort of bird it was? That turkey never could have stood upon its legs, Mr. Dickens says. They must have snatched short off like sticks of sealing wax. How they managed to cook and eat that phenomenon the author doesn't say, as it was twice the size of Tiny Tim. Yet they did it somehow, and it was a mercy if the family (previously half starved) didn't all fall ill of the unwonted gorging of that wonderful Christmas day.

Even assuming (as we easily may) that the transmutation of an old skinflint like Scrooge into a high priest of charity was quite beyond the common run of modern miracles, and that diners from such sources are as rare as they are welcome, it still remains true that human nature is apt to be at its best at Christmas, especially in England, where, of all countries in Christendom, most is made of that gentle and kindly holiday.

Yet, sad to tell, the very jollity and generosity of Christmas leads to regrettable excesses. People eat and drink too much, and suffer accordingly. The roast and the boiled, the mince pies, the plum puddings, the tremendous flushings of wine, beer, and other beverages. These things overload the stomach and give the digestion more work than it can do, and punishment follows. For Nature has no favorites; she treats those who violate her laws on the 25th December exactly as though they had committed the offence on the first Monday in August.

And as to the chronic dyspepsia, of whom there are enough in this old island to cram all the parks in London, they catch it fearfully about Christmas-time. For, in spite of all warnings, they will go in for heavy meals and take the chances. Often the penalty is an acute attack which may threaten life, and nearly always weeks of pain and digestive disorders, whereof there are as many kinds as the body has organs and functions.

To them Christmas may be "merry" for an hour or two; then their merry turns into misery, as October frogs and rains succeed a hot summer. Now the writer is far from advising a free indulgence in the gustatory and bibulous festivities of the country's most popular holiday, but there is no use protesting against the fixed resolution of the people to enjoy themselves on that occasion. The customs and traditions of centuries are bedfast, and you must as well winkle in the teeth of a north-east gale.

As a prophylactic and a cure for the evils alluded to, I can only recommend the universal use of Mother Seigel's Syrup, known to all as the best stimulant and digestant in the world.

In a letter dated January 10, 1899, a gentleman of Birmingham, who loves the pleasures of the table, and has money enough to buy whatever he wants, writes thus: "It is only fair that I should thank you: I do with all my heart, for the good done me by Mother Seigel's Syrup. For years I have been vexed with indigestion, and always had a tormenting spell of it after any public banquet or uncommon intake of rich food. Still, I was seldom able to resist temptation, although I understood perfectly well

what yielding to it was sure to cost me. I have sought a preventive or a cure in vain at the hands of the best physicians, all of whom assured me that there was but one way, namely, to live on a low diet, and let luxuries alone. "But this did not suit me, and I broke through the regulations frequently, with the inevitable results. However, when I began to use Mother Seigel's Syrup I had (almost) a license to do as I pleased. After an inviting but most risky dinner last Christmas I took a double dose of 'Mother Seigel,' and scarcely suffered at all. I told my experience, and a dozen friends adopted this amazing remedy right off. I am convinced that, with a little caution, and a dose of Mother Seigel's Syrup now and then, one may bid defiance to dyspepsia and the abominable ailments it sets up. Thanking you a thousand times, I am, yours truly, JOHN MACFARLANE."

With these facts we wish a merry (and a healthy) Christmas to the British people.

Chief Justice Better.

Private advices received yesterday by the Alameda state that Chief Justice Judd is now at Clifton Springs, New York, and that his health is considerably improved by the change.

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As a cure for rheumatism Chamberlain's Pain Balm is gaining a wide reputation. D. B. Johnston of Richmond, Ind., has been troubled with that ailment since 1862. In speaking of it he says: "I never found anything that would relieve me until I used Chamberlain's Pain Balm. It acts like magic with me. My foot was swollen and pained me very much, but one good application of Pain Balm relieved me." For sale by all druggists and dealers: Benson, Smith & Co., Ltd., agents for H. I.

The Gulick home on King street is being made ready for removal to Wai-kiki. Mr. Mossman, who recently purchased the building, is having it cut into three portions for convenience in removal.

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